

104TH CONGRESS  
1ST SESSION

# S. 1326

Respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 17 (legislative day, OCTOBER 10), 1995

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

Respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. WORKERS' COMPENSATION.**

4       (a) AMENDMENTS.—

5               (1) Section 325 of the Legislative Branch Ap-  
6       propriations Act, 1993 (Public Law 102–392) is re-  
7       pealed.

1           (2) Section 504(d) of the Migrant and Seasonal  
2       Agricultural Worker Protection Act (29 U.S.C.  
3       1854(d)) is amended to read as follows:

4       “(d)(1) Notwithstanding any other provisions of this  
5       Act, where a State workers’ compensation law is applicable  
6       and coverage is provided for a migrant or seasonal agricul-  
7       tural worker, the workers’ compensation benefits shall be  
8       the exclusive remedy for loss of such worker under this  
9       Act in the case of bodily injury or death in accordance  
10      with such State’s workers’ compensation law.

11      “(2) The exclusive remedy prescribed by paragraph  
12      (1) precludes the recovery under subsection (c) of actual  
13      damages for loss from an injury or death but does not  
14      preclude recovery under subsection (c) for statutory dam-  
15      ages or equitable relief, except that such relief shall not  
16      include back or front pay or in any manner, directly or  
17      indirectly, expand or otherwise alter or affect (A) a recov-  
18      ery under a State workers’ compensation law or (B) rights  
19      conferred under a State workers’ compensation law.”.

20      (b) EFFECTIVE DATE.—The amendment made by  
21      subsection (a)(2) shall apply to all cases in which a final  
22      judgment has not been entered.

23      **SEC. 2. EXPANSION OF STATUTORY DAMAGES.**

24      (a) AMENDMENT.—Section 504 of the Migrant and  
25      Seasonal Agricultural Worker Protection Act (29 U.S.C.

1 1854) is amended by adding after subsection (D) the fol-  
2 lowing:

3 “(e) If the court finds in an action which is brought  
4 by or for a worker under subsection (a) in which a claim  
5 for actual damages is precluded because the workers’ in-  
6 jury is covered by a State workers’ compensation law as  
7 provided by subsection (d) that—

8 “(1)(A) the defendant in the action violated  
9 section 401(b) by knowingly requiring or permitting  
10 a driver to drive a vehicle for the transportation of  
11 migrant or seasonal agricultural workers while under  
12 the influence of alcohol or a controlled substance (as  
13 defined in section 102 of the Controlled Substances  
14 Act (21 U.S.C. 802)) and the defendant had actual  
15 knowledge of the driver’s condition, and

16 “(B) such violation resulted in injury to or  
17 death of the migrant or seasonal worker by or for  
18 whom the action was brought and such injury or  
19 death arose out of and in the course of employment  
20 as determined under the State workers’ compensa-  
21 tion law,

22 “(2)(A) the defendant violated a safety stand-  
23 ard prescribed by the Secretary under section 401(b)  
24 which the defendant was determined in a previous

1 judicial or administrative proceeding to have vio-  
2 lated, and

3 “(B) such safety violation resulted in an injury  
4 or death described in paragraph (1)(B),

5 “(3)(A)(i) the defendant willfully disabled or re-  
6 moved a safety device prescribed by the Secretary  
7 under section 401(b), or

8 “(ii) the defendant in conscious disregard of the  
9 requirements of section 401(b) failed to provide a  
10 safety device required under such section, and

11 “(B) such disablement, removal, or failure to  
12 provide a safety device resulted in an injury or death  
13 described in paragraph (1)(B), or

14 “(4)(A) the defendant violated a safety stand-  
15 ard prescribed by the Secretary under section  
16 401(b),

17 “(B) such safety violation resulted in an injury  
18 or death described in paragraph (1)(B), and

19 “(C) the defendant at the time of the violation  
20 of section 401(b) also was—

21 “(i) an unregistered farm labor contractor  
22 in violation of section 101(a), or

23 “(ii) a person who utilized the services of  
24 a farm labor contractor of the type specified in  
25 clause (i) without taking reasonable steps to de-

1           termine that the farm labor contractor pos-  
2           sessed a valid certificate of registration author-  
3           izing the performance of the farm labor con-  
4           tracting activities which the contractor was re-  
5           quested by or permitted to perform with the  
6           knowledge of such person,

7 the court shall award not more than \$10,000 per plaintiff  
8 per violation with respect to whom the court made the  
9 finding described in paragraph (1), (2), (3), or (4), except  
10 that multiple infractions of a single provision of this Act  
11 shall constitute only one violation for purposes of deter-  
12 mining the amount of statutory damages due to a plaintiff  
13 under this subsection and in the case of a class action,  
14 the court shall award not more than the lesser of up to  
15 \$10,000 per plaintiff or up to \$500,000 for all plaintiffs  
16 in such class action.”.

17       (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall apply to all cases in which a final judg-  
19 ment has not been entered.

20 **SEC. 3. TOLLING OF STATUTE OF LIMITATIONS.**

21       Section 504 of the Migrant and Seasoned Agricul-  
22 tural Worker Protection Act (29 U.S.C. 1854), as amend-  
23 ed by section 2, is amended by adding after subsection  
24 (e) the following:

1       “(f) If it is determined under a State workers’ com-  
 2       pensation law that the workers’ compensation law is not  
 3       applicable to a claim for bodily injury or death of a mi-  
 4       grant or seasonal agricultural worker, the statute of limi-  
 5       tations for bringing an action for actual damages for such  
 6       injury or death under subsection (a) shall be tolled for  
 7       the period during which the claim for such injury or death  
 8       under such State workers’ compensation law was pending.  
 9       The statute of limitations for an action for other actual  
 10      damages, statutory damages or equitable relief arising out  
 11      of the same transaction or occurrence as the injury or  
 12      death of the migrant or seasonal agricultural worker shall  
 13      be tolled for the period during which the claim for such  
 14      injury or death was pending under the State workers’  
 15      compensation law.”.

16      **SEC. 4. DISCLOSURE OF WORKERS’ COMPENSATION COV-**  
 17                                      **ERAGE.**

18           (a) **MIGRANT WORKERS.**—Section 201(a) of the Mi-  
 19      grant and Seasonal Agricultural Worker Protection Act  
 20      (29 U.S.C. 1821(a)) is amended by striking “and” at the  
 21      end of paragraph (6), by striking the period at the end  
 22      of paragraph (7) and inserting “; and”, and by adding  
 23      after paragraph (7) the following:

24                   “(8) whether State workers’ compensation in-  
 25      surance is provided, and, if so, the name of the

1 State workers' compensation insurance carrier, the  
2 name of the policyholder of such insurance, the  
3 name and the telephone number of each person who  
4 must be notified of an injury or death, and the time  
5 period within which such notice must be given.

6 Compliance with the disclosure requirement of paragraph  
7 (8) for a migrant agricultural worker may be met if such  
8 worker is given a photocopy of any notice regarding work-  
9 ers' compensation insurance required by law of the State  
10 in which such worker is employed. Such worker shall be  
11 given such disclosure at the time of recruitment or if suffi-  
12 cient information is unavailable at that time, at the earli-  
13 est practicable time but in no event later than the com-  
14 mencement of work.”.

15 (b) SEASONAL WORKERS.—Section 301(a)(1) of the  
16 Migrant and Seasonal Agricultural Worker Protection Act  
17 (29 U.S.C. 1831(a)(1)) is amended by striking “and” at  
18 the end of subparagraph (F), by striking the period at  
19 the end of subparagraph (G) and inserting “; and”, and  
20 by adding after subparagraph (G) the following:

21 “(H) whether State workers' compensation in  
22 insurance is provided, and, if so, the name of the  
23 State workers' compensation insurance carrier, the  
24 name of the policyholder of such insurance, the  
25 name and the telephone number of each person who

1 must be notified of an injury or death, and the time  
2 period within which such notice must be given.

3 Compliance with the disclosure requirement of subpara-  
4 graph (H) may be met if such worker is given, upon re-  
5 quest, a photocopy of any notice regarding workers' com-  
6 pensation insurance required by law of the State in which  
7 such worker is employed.''.  
8

9 (c) EFFECTIVE DATE.—The amendments made by  
10 subsections (a) and (b) shall take effect upon the expira-  
11 tion of 90 days after the date final regulations are issued  
12 by the Secretary of Labor to implement such amendments.

13 **SEC. 5. LIABILITY INSURANCE.**

14 (a) AMENDMENT.—Section 401(b)(3) of the Migrant  
15 and Seasonal Agricultural Worker Protection Act (29  
16 U.S.C. 1841(b)(3)) is amended to read as follows:

17 “(3) The level of insurance required under paragraph  
18 (1)(C) shall be determined by the Secretary considering  
19 at least the factors set forth in paragraph (2)(B) and simi-  
20 lar farmworker transportation requirements under State  
21 law.’’.

22 (b) REGULATIONS.—Within 180 days of the date of  
23 the enactment of this Act, the Secretary of Labor shall  
24 promulgate regulations establishing insurance levels under  
section 401(b)(3) of the Migrant and Seasonal Agricul-



1 tural Worker Protection Act (29 U.S.C. 1841(b)(3)) as  
2 amended by subsection (a).

3 (c) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) takes effect upon the expiration of 180 days  
5 after the date of enactment of this Act or upon the issu-  
6 ance of final regulations under subsection (b), whichever  
7 occurs first.

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